

FILED

APR 14 2016

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DOUGLAS JOSEPH CHYATTE,

Petitioner,

vs.

LEROY KIRKEGARD, et al.,

Respondents.

CV 16-01-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Order, Findings and Recommendation on March 14, 2016, recommending dismissal of Petitioner Douglas Chyatte's ("Chyatte") application for writ of habeas corpus under 28 U.S.C. § 2254. Chyatte failed to timely object to the Findings and Recommendation, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendation, the Court agrees with

SCANNED

Judge Lynch's recommendation that Chyatte's application should be dismissed without prejudice because his state postconviction proceeding is ongoing. Chyatte has thus failed to completely exhaust the state remedies available to him and should refile his application, if necessary, upon the conclusion of his state court proceeding.

There being no clear error in Judge Lynch's Findings and Recommendation, IT IS ORDERED that:

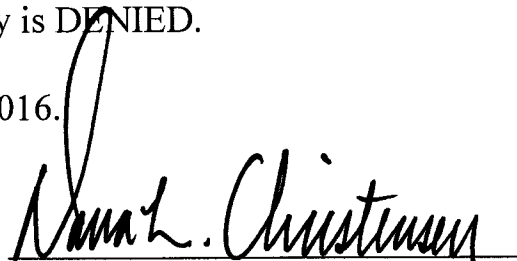
(1) Judge Lynch's Findings and Recommendation (Doc. 5) are ADOPTED IN FULL.

(2) Chyatte's petition (Docs. 1, 2) is DISMISSED WITHOUT PREJUDICE for failure to exhaust state remedies.

(3) The Clerk of Court is directed to enter by separate document a judgment of dismissal.

(4) A certificate of appealability is DENIED.

Dated this 14th day of April, 2016.


Dana L. Christensen, Chief Judge
United States District Court